Petitioner, Forbes Leasing and Finance Corporation, herewith files this Petition for Rehearing of the order of this Court dated October 10, 1972, which denied the Petition for a Writ of Certiorari and in support thereof states as follows:

1. On April 26, 1972, petitioner filed a Petition for Writ of Certiorari to review a judgment of the Court of Appeals for the Third Circuit, which judgment was entered on February 24, 1972.

2. This Court, on October 10, 1972, filed an order denying the Petition for Writ of Certiorari.

3. The Petition for Writ of Certiorari sought review of the judgment of the Court of Appeals for the Third Circuit which upheld the constitutionality of the Pennsylvania foreign attachment procedure. Pennsylvania Rules of Civil Procedure, Foreign attachment, Rules 1251 through 1279, inclusive (Petition for Writ of Certiorari, App. A56-A70). This procedure permits plaintiff to commence a suit by seizure of property on a perfunctory writ issued automatically by the prothonotary (court clerk) at the request of plaintiff's counsel and permits its service by the sheriff without any prior notice to the defendant, without any prior hearing, without any affidavit of meritorious action, without the prior posting of any bond by plaintiff and without any prior intervention by any judicial officer. Such suit can be commenced by writ of foreign attachment even though the court has personal jurisdiction over the defendant because the defendant is doing business in the Commonwealth of Pennsylvania, or otherwise is subject to personal service. Thus there is no reason to use attach-

ment or garnishment to achieve jurisdiction. Moreover, said attachment or garnishment is not dissolved by the general appearance of the defendant and, unless a bond in double the amount claimed or equivalent security is posted, the attachment remains in effect until final disposition of the case. As stated in the Petition for Writ of Certiorari, the District Judge as well as all three Judges of the Court of Appeals for the Third Circuit believed that Pennsylvania's foreign attachment scheme is repugnant to the Constitution of the United States but felt constrained to uphold it only because of the failure of this Court to state in *Sniadach v. Family Finance Corp.*, 395 U. S. 337 (1969) that *Ownbey v. Morgan*, 256 U. S. 94 (1921) and *McKay v. McInnes*, 279 U. S. 820 (1929) were overruled. *Ownbey* and *McKay* were, of course, decided long before the numerous decisions of this Court which have required an exacting standard of due process and equal protection, through effective hearing of a party's defenses, as required by the Fourteenth Amendment to the Constitution of the United States.

4. *After* the Reply Brief herein was filed on June 22, 1972 (before the June, 1972 adjournment of this Court), a three-judge court of the United States District Court for the District of Massachusetts held that a comparable Massachusetts statute violated the due process requirements of the Fourteenth Amendment. This decision is in *Schneider v. Margossian*, with an opinion dated September 22, 1972, written by Judge Garrity. Petitioner's counsel did not become aware of this case until a day ago since it was first called to his attention by publication in the United States Law Week for October 17, 1972, 41 U. S. L. W. 2189. Under long-standing practice, most civil actions in Massachusetts may be commenced by attaching

a defendant's property. Under this procedure a plaintiff simply fills in the blanks of a writ averring that the defendant is liable to him for a certain amount on a particular cause of action; the writ then directs the appropriate officer to attach the property of the defendant in the defendant's hands or in the hands of another. Although the defendant receives notice of the attachment shortly after it is made, there is no provision whereby he can contest an attachment before it is made. As stated above, the three-judge court declared such statute unconstitutional. This statute is identical to the Pennsylvania foreign attachment statute here under attack.

5. Thus a three-judge court in the District Court for the District of Massachusetts has decided a case in a manner which is in direct conflict with the decision of the Third Circuit here under review. Clearly the losing party in the *Schneider* case will seek review by appeal in this Court, which review, under 28 U. S. C. § 1253 is of right.

6. Since there is now a direct conflict between the decision in the Third Circuit and a three-judge court decision in Massachusetts, this Court should grant this Petition for Rehearing in the case at bar. In the alternative, this Court should hold this Petition for Rehearing until there is final disposition in *Schneider v. Margossian* and apply the result in that case to the case at bar.

WHEREFORE it is prayed that, based upon the Petition for Rehearing, a Petition for Writ of Certiorari be granted and, if and when the defendant therein files a Jurisdictional Statement and probable jurisdiction is noted pursuant thereto, this case be set down for argument along with

Schneider v. Margossian, 41 U. S. L. W. 2189 (U. S. D. C. Massachusetts, Sept. 22, 1972). If the defendant in the *Schneider* case does not seek review in this court, then argument nevertheless should be heard to resolve the conflict which clearly exists.

Respectfully submitted,

WILLIAM T. COLEMAN, JR.,
ROBERT W. MARIS,
2600 The Fidelity Building,
Philadelphia, Pennsylvania. 19109
Attorneys for Petitioner.

Of Counsel:

DILWORTH, PAXSON, KALISH,
LEVY & COLEMAN.

Dated: November 1, 1972.

Certificate of Counsel.

WILLIAM T. COLEMAN, JR., herewith certifies that he is a member of the bar of this Court, that he is attorney for Petitioner in this matter and that this Petition for Rehearing is filed because of a new precedent which came to his attention after the Reply Brief was filed and is not for the purpose of delay.

WILLIAM T. COLEMAN, JR.